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IN REPLY REFER TO:

Tampa

February 27, 2006

Kathleen West, Esq.  
Associate Regional Counsel  
EPA Region 4  
Atlanta Federal Center  
61 Forsyth St., SW  
Atlanta, GA 30303

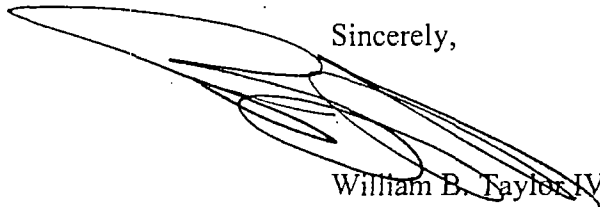
***Re: Normandy Park Superfund Site; 11110 N. 56<sup>th</sup> Street, Temple Terrace, Florida  
Declaration of Restrictive and Affirmative Covenants***

Dear Kathleen:

Enclosed please find a copy of the fully executed Declaration of Restrictive and Affirmative Covenants for the above referenced matter. I have, by copy of this letter, sent a fully executed copy to Kelsey A. Helton at the Florida Department of Environmental Protection as well.

Should you have any questions, please do not hesitate to call.

Sincerely,



William B. Taylor IV

WBTIV:kbb

Enclosure

c: Kelsy A. Helton  
Joyce Morales-Caramella  
Steve Green

INSTR # 2006068283

O BK 16094 PG 0022

Pgs 0022 - 33; (12pgs)

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PAT FRANK CLERK OF COURT

HILLSBOROUGH COUNTY

DEPUTY CLERK Y Roche

This instrument prepared by:  
William B. Taylor IV, Esquire  
Macfarlane Ferguson & McMullen  
P.O. Box 1531  
Tampa, Florida 33601

**DECLARATION OF RESTRICTIVE  
AND AFFIRMATIVE COVENANTS**

1. This Declaration of Restrictive and Affirmative Covenants ("Declaration" or "this instrument") is given this 9<sup>TH</sup> day of JANUARY, 2006, by NORMANDY PARK HOLDINGS a FL corporation, ("Grantor"), having an address of 11110 N. 56<sup>TH</sup> STREET TAMPA, FL to the State of Florida Department of Environmental Protection ("Grantee"). 33617

**WITNESSETH:**

2. WHEREAS, Grantor is the sole fee simple owner of a parcel of land located in the county of Hillsborough, State of Florida, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the Normandy Park Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, proposed for the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in February, 1995; and

4. WHEREAS, The Superfund Streamlined Remedial Investigation and Focused Feasibility Study confirmed that soil was contaminated with lead, antimony and arsenic, and that groundwater is contaminated with lead and antimony in concentrations that exceed standards or recommended exposure or ingestion levels; and

5. WHEREAS, in a Record of Decision dated May 11, 2000 (the "ROD"), the EPA Region 4 Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

- excavation of the top two feet of exposed soil around the apartment complex
- removal of wooden deck in the southern complex and excavation beneath
- treatment of excavated soil via stabilization and offsite disposal
- placement of clean fill in excavated areas
- monitored natural attenuation of groundwater
- placement of institutional controls in the form of deed restrictions/restrictive and affirmative covenants to limit future use of soil and groundwater, ensure maintenance of the engineered remedy, and authorize site access for certain purposes; and

6. WHEREAS, with the exception of continued monitored natural attenuation of the groundwater, the remedial action has been implemented at the Site; and

7. WHEREAS, the parties hereto have agreed 1) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and 2) to grant an irrevocable right of access over the Property to the Grantee and its agents or representatives for purposes of implementing, facilitating and monitoring the remedial action; and

8. WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in the implementation of all response actions at the Site and Grantor deems it desirable and in the best interest of all present and future owners of the Property that such remediation proceed and that the Property be held subject to certain irrevocable restrictions and licenses, all of which are more particularly hereinafter set forth;

NOW, THEREFORE:

9. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the recitals above, the terms of the Consent Decree in the case of the United States v. Gulf Coast Recycling, Inc., Civil Action # 8:01-CIV-1191-T-24TBM, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, 1) an irrevocable use restriction and site access covenant of the nature and character, and for the purposes hereinafter set forth and 2), the perpetual right to enforce said covenants and use restrictions, with respect to the Property.

10. Purpose: *It is the purpose of this instrument to convey to the Grantee rights to*

facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. The covenants, terms, conditions, restrictions and grants contained herein shall touch and concern the Property; shall run with the land; shall apply to and be binding upon and inure to the benefit of Grantor and Grantee, their successors and assigns; and shall continue as a servitude running in perpetuity with the Property and with title to the Property.

11. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property:

The owner of the property shall notify EPA and Grantee prior to the disturbance of any existing structures, more particularly described on Exhibit B attached hereto and made a part hereof. These structures include but are not limited to *concrete* building foundations *and* asphalt parking lots. *With the* notification, *the* property owner shall also submit a plan for EPA and Grantee approval which addresses the soil underneath these structures consistent with the requirements of the ROD for the Site. The existing structures shall not be disturbed until EPA and Grantee have provided written approval of a plan for addressing the potentially contaminated soil underneath.

The owner of the Property will not construct any groundwater wells on the Property or use the groundwater for any purpose without receiving written prior approval from EPA and Grantee.

The owner of the Property shall maintain all asphalt byways and parking lots so as to ensure their protective purpose as a capping remedial measure consistent with the requirements of the ROD for the Site.

12. Irrevocable Covenant for Site Access: Grantor hereby grants to the Grantee, its agents and representatives, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing the response actions in the ROD;
- b) Verifying any data or information submitted to EPA and Grantee;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;

- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if the Grantee, in its sole discretion, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. Modification: The above restrictions and covenants may be modified, or terminated in whole or in part, in writing, by the Grantee, executed by Grantee in recordable form, and such writing shall be recorded by Grantor.

14. (a) Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and covenants granted herein.

(b) Reserved Rights of EPA: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

(c) Reserved Rights of Grantee: Nothing in this document shall limit or otherwise affect Grantee's rights of entry and access or authority to act under state or federal law.

15. Liability. Grantor shall take responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantor nor any person or entity claiming by or through Grantor shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property. Grantor shall pay any and all real property taxes and assessments levied by competent authority on the Property.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

17. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS**

**SUBJECT TO A DECLARATION OF RESTRICTIVE AND  
AFFIRMATIVE COVENANTS, DATED \_\_\_\_\_  
2004, RECORDED IN THE PUBLIC LAND RECORDS ON  
\_\_\_\_\_, 20\_\_\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN  
FAVOR OF, AND ENFORCEABLE BY, THE STATE OF  
FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

18. Administrative Jurisdiction: The state agency having administrative jurisdiction over the interests acquired by the State of Florida by this instrument is the Grantee. EPA is a third party beneficiary to the interests acquired by the Grantee under this instrument.

19. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

20. Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

21. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

22. Covenants: Grantor hereby covenants to and with the Grantee, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Exhibit C attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

23. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, referencing the Site

name and Site ID # 04XB, and addressed as follows:

To Grantor:

NORMANDY PARK HOLDINGS  
11110 N. 56TH STREET  
TAMPA, FL 33617

To Grantee:

Bureau Chief, Waste Cleanup  
FDEP M.S. 4505  
2600 Blair Stone Road  
Tallahassee, FL 32399

To EPA:

U.S. EPA, Region 4  
Waste Management Division  
Superfund Remedial and Technical Services Branch  
Section Chief, Section D  
61 Forsyth Street, SW  
Atlanta, GA 30303

24. Recording in Land Records. Grantor shall record this Declaration of Restrictive and Affirmative Covenants in timely fashion in the Official Records of Hillsborough County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this document in the public records.

25. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior

discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

k) Nothing contained in this agreement shall preclude or in any other way hinder the sale and/or conversion of the property to condominiums.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this 9<sup>TH</sup> day of JANUARY, 2006.


By:   
Its: MANAGER

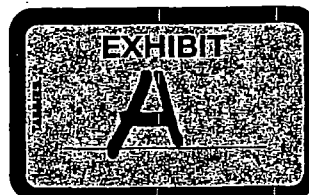


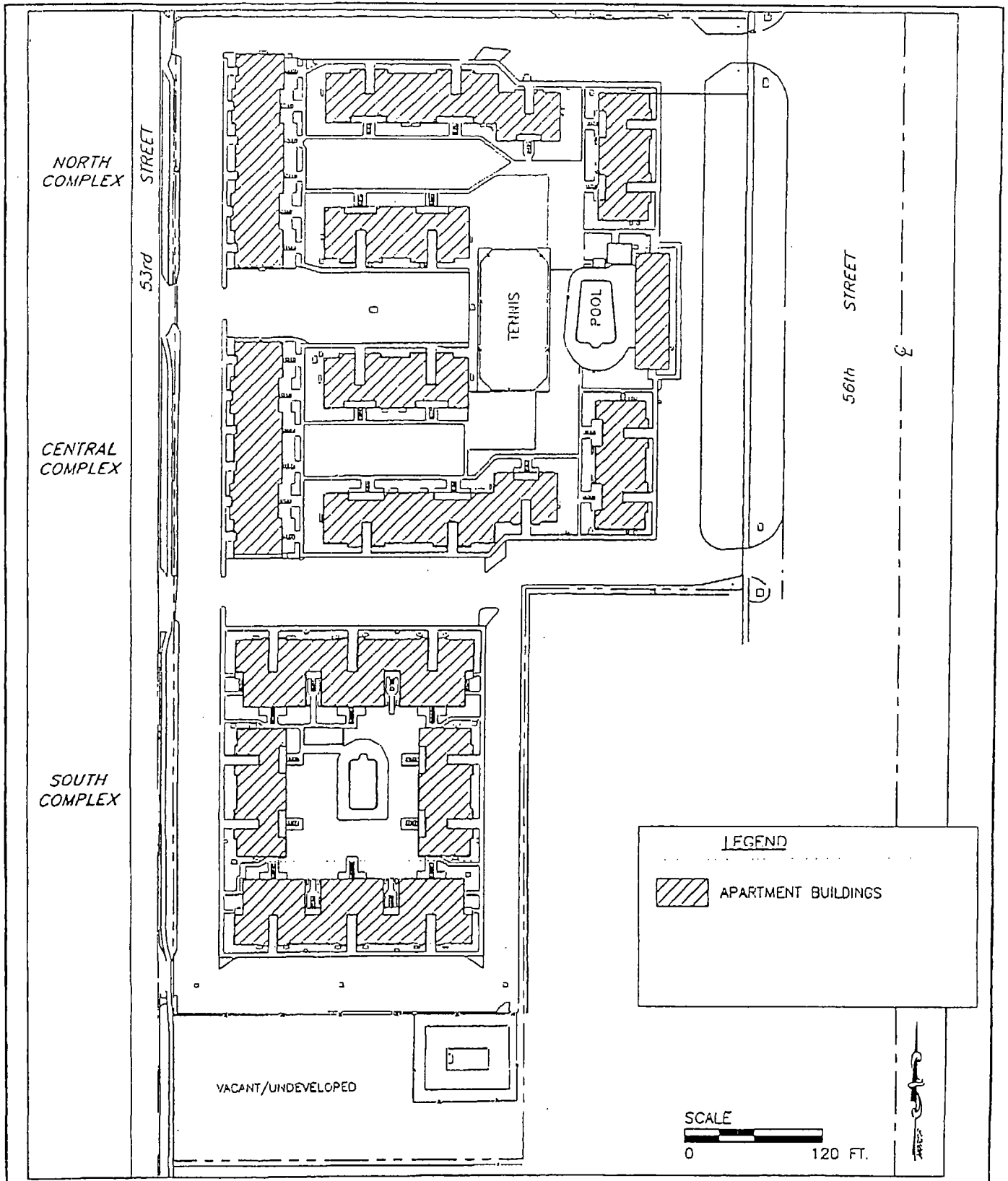



Exhibit A

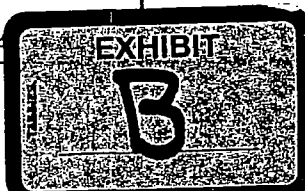
All of Lots B, C, D, E, F, G, H and J Block 23, and Lots B, C, D and E, Block 24, Less the East 114 feet thereof for the right of way for State Road No. S-583 (5<sup>th</sup> Street) in Section 15, Township 28 South, Range 19 East, Temple Terrace Subdivision, as recorded in Plat Book 25, Page 62, of the public records of Hillsborough County, Florida.

9030431.1





NORMANDY PARK APARTMENTS	DATE 2/2/06	JOB NO. 2148M	PLATE NO. 2
 <b>QORE</b> <sup>TM</sup> PROPERTY SCIENCES 1211 Tech Blvd. Suite 200 Tampa, Florida 33619 (813) 623-6000	SITE LAYOUT ... TERRACE, FLORIDA		



MacFarlane Ferguson & McMullen  
201 N. Franklin Street Suite 2000 One Tampa City Center  
Tampa FL 33602  
(813) 273-4200  
FAX: (813) 273-4396

Lawyers Title Insurance Corporation

## OWNERSHIP AND ENCUMBRANCE REPORT

Order No: 40309797LA

Customer Reference No: 4352-6

This will serve to certify that Lawyers Title Insurance Corporation has caused to be made a search of the Public Records of Hillsborough County, Florida, ("Public Records") as contained in the office of the Clerk of the Circuit Court of said County, from December 21, 1999 through January 24, 2006, at 8:00 a.m., as to the following described real property lying and being in the aforesaid County, to-wit:

Parcel 1:

Lot J, Block 23 of Temple Terraces in Section 15, Township 28 South, Range 19 East, as per map or plat thereof, recorded in Plat Book 25, Page 62, of the Public Records of Hillsborough County, Florida.

Parcel 2:

All of Lots B, C, D, E, F, G and H, Block 23, and Lots B, C, D and E, Block 24, Less the East 114 feet thereof, for the right of way for State Road No. S0583 (56th Street) in Section 15, Township 28 South, Range 18 East, Temple Terraces, as per map or plat thereof, recorded in Plat Book 25, Page 62, of the Public Records of Hillsborough County, Florida.

As of the effective date of this Report the apparent record fee simple title owner(s) to the above described real property is/are:

Normandy Park Holdings, Inc., a Florida corporation, by virtue of Warranty Deed recorded in Official Records Book 9980, Page 411.

The following liens against the said real property recorded in the aforesaid Public Records have been found:

1. UCC Financing Statement recorded in Official Records Book 11353, Page 61, as assigned in Official Records Book 12021, Page 778. (as to Parcel 2)
2. Mortgage and Security Agreement recorded in Official Records Book 11387, Page 591, as assigned in Official Records Book 12525, Page 1279. (as to Parcel 2)
3. Assignment of Leases and Rents recorded in Official Records Book 11387, Page 653. (as to Parcel 2)
4. Mortgage and Security Agreement recorded in Official Records Book 11697, Page 1132, as modified in Official Records Book 12427, Page 1515 and assigned in Official Records Book 15683, Page 1659. (as to Parcel 2)
5. UCC Financing Statement recorded in Official Records Book 11697, Page 1144. (as to Parcel 2)
6. UCC Financing Statement recorded in Official Records Book 11697, Page 1148. (as to Parcel 2)
7. Exparte Default Judgment Against Defendent recorded in Official Records Book 14298, Page 939, as re-recorded and certified in Official Records Book 14348, Page 1767.



8. Claim of Lien recorded in Official Records Book 14051, Page 290.
9. Notice of Lis Pendens recorded in Official Records Book 14354, Page 1309.
10. Final Summary Judgment of Foreclosure and Order Taxing Costs and Attorney's Fees recorded in Official Records Book 15480, Page 1605.
11. Order Cancelling Foreclosure Sale recorded in Official Records Book 15607, Page 57 and Official Records Book 15664, Page 745.

NOTE: The 2005 Ad Valorem Taxes under Folio Number 200711-0000 were EXEMPT. (as to Parcel 1)

NOTE: The 2005 Ad Valorem Taxes under Folio Number 200709-0000 were PAID and the 2004 Ad Valorem Taxes for said Folio remain UNPAID. (as to parcel 2)

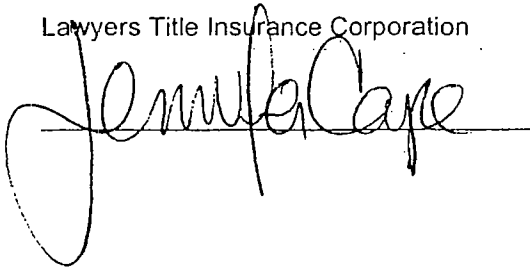
Public Records shall be defined herein as those records currently established under the Florida Statutes for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

This Report shows only matters disclosed in the aforesaid Public Records, and it does not purport to insure or guarantee the validity or sufficiency of any documents noted herein; nor have the contents of any such documents been examined for references to other liens or encumbrances. This Report is not to be construed as an opinion, warranty, or guarantee of title, or as a title insurance policy; and its effective date shall be the date above specified through which the Public Records were searched. This Report is being provided for the use and benefit of the Certified Party only, and it may not be used or relied upon by any other party. This Report may not be used by a Lawyers Title Insurance Corporation agent for the purpose of issuing a Lawyers Title Insurance Corporation title insurance commitment or policy.

In accordance with Florida Statutes Section 627.7843 the liability Lawyers Title Insurance Corporation may sustain for providing incorrect information in this Report shall be the actual loss or damage of the Certified Party named above up to a maximum amount of \$1,000.00.

IN WITNESS WHEREOF, Lawyers Title Insurance Corporation has caused this Report to be issued in accordance with its By-Laws.

Lawyers Title Insurance Corporation

A handwritten signature in black ink, appearing to read "Jennifer Cape", is written over a horizontal line. The signature is stylized with a large, looping initial "J" and a cursive "Cape".